

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

UNITED STATES OF AMERICA,  
Plaintiff,  
  
v.  
  
NICHOLAS YOUNG,  
Defendant.

The government's production of classified *Jencks* five calendar days before trial is in defiance of the Discovery Order. The purpose of the five-calendar-day rule is to produce the *Jencks* materials to the defense in time to use them at trial, which is beginning December 5, 2017. Given that declassification of documents in this case has consumed months of time, the government's production cannot be deemed in compliance with the Discovery Order.

Nor is that all. The government not only failed to comply with the *Jencks* rule by serving last-minute classified materials, it failed to provide warning to the defense – or the Court – that these materials would be produced at the close of business five days before trial. Even assuming there is some excuse for this last minute classified production, there is no reason the defense should not have been warned of this problem reasonably in advance so it could take proper precautions, advise the Court of its ability to review the classified information, and make determinations as to whether the information should be declassified in good time before trial.

Ms. Moreno is now expected to review three Redwelds of classified materials before the opening of trial next Tuesday. The SCIF is not open over the weekend. On business days, the SCIF closes at 5 p.m. She cannot go into the SCIF *during* trial. Nor is it clear how the parties would resolve CIPA-related issues during trial in a manner expeditious enough to resolve any declassification issues as they arise.

Mr. Young moves to strike every government witness for whom a last-minute classified *Jencks* production has been made. Mr. Young cannot know the significance of the classified *Jencks* materials, but an adverse inference should be drawn against the government since it is unclear why it would have made this risky decision for immaterial witness statements.

Dated: November 30, 2017

Respectfully submitted.

/s/ Nicholas D. Smith  
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**Certificate of Service**

I hereby certify that on the 30th day of November, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

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And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

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